

Senate Bill No. 53

CHAPTER 28

An act to amend Sections 63049, 63049.4, and 63049.5 of the Government Code, relating to tobacco settlement moneys, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 53, DeSaulnier. Tobacco settlement moneys: Master Settlement Agreement.

Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement, in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories. The state has entered into a memorandum of understanding providing for the allocation of the state's share of moneys to be received under the Master Settlement Agreement between the state and the various local governments of the state. The Attorney General, on behalf of the state, has entered into the California escrow agreement with the California escrow agent named in the agreement relating to the division between the state and the participating jurisdictions of amounts payable under the Master Settlement Agreement.

Existing law sets forth the duties of the California Infrastructure and Economic Development Bank and its board of directors generally in performing various financing transactions, including the issuance of bonds or the authorizing of the issuance of bonds by a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity, known as a special purpose trust. Under existing law, the bank is authorized to sell for, and on behalf of, the state all or any portion of the state's tobacco assets, as defined, to a special purpose trust consisting of a not-for-profit corporation.

This bill would authorize the Attorney General to negotiate amendments to the Master Settlement Agreement, the memorandum of understanding, and the California escrow agreement, provided that those amendments do not materially adversely alter, limit, or impair the rights to receive tobacco assets sold to the special purpose trust, nor in any way materially impair the rights and remedies of bondholders or the security for their bond until those bonds, together with the interest on the bonds and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 63049 of the Government Code is amended to read:

63049. The definitions contained in this section are in addition to the definitions contained in Section 63010 and together with the definitions contained in that section shall govern the construction of this article, unless the context requires otherwise:

(a) “California escrow agreement” means the escrow agreement dated April 12, 2000, as amended, between the Attorney General, on behalf of the state, and the California escrow agent named in the agreement relating to the division between the state and the participating jurisdictions of amounts payable under the Master Settlement Agreement.

(b) “Consent decree and final judgment” means, collectively, the Consent Decree and Final Judgment entered in the Superior Court of the State of California for San Diego County on December 9, 1998, approving the Master Settlement Agreement, the memorandum of understanding, and the orders entered by the court on January 18, 2000, and July 30, 2001, approving the Agreement Regarding Interpretation of Memorandum of Understanding.

(c) “Master Settlement Agreement” means the settlement dated November 23, 1998, as amended, among the attorneys general of 46 states (including California), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and the other Subsequent Participating Manufacturers as defined therein.

(d) “Memorandum of understanding” means, collectively, the memorandum of understanding dated August 5, 1998, as amended, together with the Agreement Regarding Interpretation of Memorandum of Understanding, as amended, among the state and various local governments of the state to coordinate their pending cases and to allocate certain portions of the recovery under the Master Settlement Agreement.

(e) “Operating expenses” means the reasonable operating expenses of the special purpose trust, including, without limitation, the costs of preparation of accounting and other reports, maintenance of the ratings on the bonds, insurance premiums, or other required activities of the special purpose trust, and fees and expenses incurred for professional consultants and fiduciaries.

(f) “Tobacco assets” means all moneys required to be paid to the state under the Master Settlement Agreement, as further provided in the memorandum of understanding and the California escrow agreement, and all of the state’s rights to receive those payments.

SEC. 2. Section 63049.4 of the Government Code is amended to read:

63049.4. (a) On and after the effective date of each sale of tobacco assets, the state shall have no right, title, or interest in or to the tobacco assets sold, and the tobacco assets so sold shall be property of the special

purpose trust and not of the state, the bank board, the State Public Works Board, or the bank, and shall be owned, received, held, and disbursed by the special purpose trust or the trustee for the financing. None of the tobacco assets sold by the state pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the bank board, the State Public Works Board, or the bank.

On or before the effective date of any sale, the state, acting through its Attorney General, upon direction of the bank, shall notify the California escrow agent under the Master Settlement Agreement and the California escrow agreement that the sold tobacco assets have been sold to the special purpose trust and irrevocably instruct the California escrow agent that, as of the applicable effective date, the tobacco assets sold are to be paid directly to the trustee for the applicable bonds of the special purpose trust. The state pledges to and agrees with the holders of any bonds issued by the special purpose trust that it will not amend the Master Settlement Agreement, the memorandum of understanding, or the California escrow agreement, or take any other action, in any way that would materially adversely alter, limit, or impair the rights to receive tobacco assets sold to the special purpose trust pursuant to this article, nor in any way materially impair the rights and remedies of bondholders or the security for their bonds until those bonds, together with the interest thereon and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged. The state further pledges and agrees that it shall enforce its rights to collect all moneys due from the participating tobacco products manufacturers under the Master Settlement Agreement and, in addition, shall diligently enforce the model statute as contemplated in the Master Settlement Agreement (Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code) against all tobacco product manufacturers selling tobacco products in the state and that are not signatories to the Master Settlement Agreement, in each case in the manner and to the extent necessary in the judgment of the Attorney General to collect all moneys to which the state is entitled under the Master Settlement Agreement. The special purpose trust may include these pledges and undertakings in its bonds. Notwithstanding these pledges and undertaking by the state, the Attorney General may in his or her discretion enforce any and all provisions of the Master Settlement Agreement, without limitation.

(b) Bonds issued pursuant to this article shall not be deemed to constitute a debt of the state or a pledge of the faith or credit of the state, and all bonds shall contain on the face thereof a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the state or of any political subdivision thereof, other than the special purpose trust, is or shall be pledged to the payment of the principal of or the interest on the bonds.

(c) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

(d) The special purpose trust and the bank shall be treated as public agencies for purposes of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and any action or proceeding challenging the validity of any matter authorized by this article shall be brought in accordance with, and within the time specified in, that chapter.

(e) Notwithstanding any other provision of law, the exclusive means to obtain review of a superior court judgment entered in an action brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any bonds to be issued, or any other contracts to be entered into, or any other matters authorized by this article, shall be by petition to the Supreme Court for writ of review. Any petition shall be filed within 15 days following the notice of entry of the superior court judgment, and no extension of that period may be allowed. If no petition is filed within the time allowed therefor, or the petition is denied, with or without opinion, the decision of the superior court shall be final and enforceable as provided in subdivision (a) of Section 870 of the Code of Civil Procedure. In any case in which a petition has been filed within the time allowed therefor, the Supreme Court shall make any orders, as it may deem proper in the circumstances. If no answering party appeared in the superior court action, the only issues that may be raised in the petition are those related to the jurisdiction of the superior court.

(f) The Attorney General may negotiate amendments to the Master Settlement Agreement, the memorandum of understanding, and the California escrow agreement, provided that those amendments do not materially adversely alter, limit, or impair the rights to receive tobacco assets sold to the special purpose trust pursuant to this article, nor in any way materially impair the rights and remedies of bondholders or the security for their bond until those bonds, together with the interest on the bonds and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged.

SEC. 3. Section 63049.5 of the Government Code is amended to read:

63049.5. The state acknowledges and agrees that its 57 counties, the Cities of San Jose, Los Angeles, and San Diego, and the City and County of San Francisco, commonly and collectively known as the “participating jurisdictions,” have rights and interests in the memorandum of understanding. In recognition of the rights of the participating jurisdictions of the state contained in the memorandum of understanding, the state pledges that the sale of tobacco assets authorized by this article shall in no way include and the state shall not otherwise materially adversely alter, limit, or impair the rights of the participating jurisdictions, including, but not limited to, rights to receive payments, set forth in the memorandum of understanding. Nothing in this article shall be construed to alter the right of each of the participating jurisdictions to sell or assign some or all of its interest, and rights to receive

payments, under the memorandum of understanding in the manner deemed appropriate by its governing body.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

(a) The Attorney General is charged with enforcing the tobacco Master Settlement Agreement on behalf of the state.

(b) In order to resolve ongoing disputes about payment obligations under the tobacco Master Settlement Agreement, all 46 states which are parties to the agreement, including this state, are required to agree collectively to amend the agreement.

(c) One such amendment has already been approved by almost all the states, but cannot go into effect until this state also agrees.

(d) Other amendments are currently being negotiated.

(e) In order for this state to benefit from nationwide settlements that involve amending the Master Settlement Agreement, the Attorney General needs the flexibility to agree to Master Settlement Agreement amendments in a timely manner, provided that those amendments do not materially adversely alter, limit, or impair the rights to receive tobacco assets sold to the special purpose trust, nor in any way materially impair the rights and remedies of bondholders or the security for their bond until those bonds, together with the interest on the bonds and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged.

(f) In order to provide the Attorney General the needed flexibility to resolve disputes about the Master Settlement Agreement's terms through amendments to the Master Settlement Agreement, it is necessary that this act take effect immediately.